

## **Part 3**

### **Purposes And Powers**

#### **16-6a-301 Purposes.**

- (1) Every nonprofit corporation incorporated under this chapter that in its articles of incorporation has a statement meeting the requirements of Subsection 16-6a-202(3)(a) may engage in any lawful activity except for express limitations set forth in the articles of incorporation.
- (2)
  - (a) A nonprofit corporation engaging in an activity that is subject to regulation under another statute of this state may incorporate under this chapter only if permitted by, and subject to all limitations of, the other statute.
  - (b) Without limiting Subsection (2)(a) and subject to Subsection (2)(c), an organization may not be organized under this chapter if the organization is subject to the:
    - (i) insurance laws of this state; or
    - (ii) laws governing depository institutions as defined in Section 7-1-103.
  - (c) Notwithstanding Subsection (2)(b), the following may be organized under this chapter:
    - (i) a health insurance purchasing association as defined in Section 31A-34-103; and
    - (ii) a health insurance purchasing alliance licensed under Title 31A, Chapter 34, Voluntary Health Insurance Purchasing Alliance Act.

Enacted by Chapter 300, 2000 General Session

#### **16-6a-302 General powers.**

Unless its articles of incorporation provide otherwise, and except as restricted by the Utah Constitution, every nonprofit corporation has:

- (1) perpetual duration and succession in its corporate name; and
- (2) the same powers as an individual to do all things necessary or convenient to carry out its permitted activities and affairs, including without limitation the power to:
  - (a) sue and be sued, complain and defend in its corporate name;
  - (b)
    - (i) have a corporate seal, that may be altered at will; and
    - (ii) use the corporate seal, or a facsimile of the corporate seal, by impressing or affixing it or in any other manner reproducing it;
  - (c) make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for managing and regulating the affairs of the nonprofit corporation;
  - (d) purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;
  - (e) sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property and assets;
  - (f) purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with shares or other interests in, or obligations of, any other entity;
  - (g) make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations and secure any of its obligations by mortgage or pledge of any of its property, assets, franchises, or income;

- (h) lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment, except that a nonprofit corporation may not lend money to or guarantee the obligation of a director or officer of the nonprofit corporation;
- (i) be an agent, associate, fiduciary, manager, member, partner, promoter, or trustee of, or to hold any similar position with, any entity;
- (j) conduct its business, locate offices, and exercise the powers granted by this chapter within or without this state;
- (k)
  - (i) elect directors and appoint officers, employees, and agents of the nonprofit corporation;
  - (ii) define the duties of the directors, officers, employees, and agents; and
  - (iii) fix the compensation of the directors, officers, employees, and agents;
- (l) pay compensation in a reasonable amount to its directors, officers, or members for services rendered, including:
  - (i) payment of advances for expenses reasonably expected to be incurred; and
  - (ii) expenses relating to relocation of directors, officers, or employees;
- (m) pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents;
- (n) make contributions to or for any person for:
  - (i) the public welfare;
  - (ii) charitable, religious, scientific, or educational purposes; or
  - (iii) for other purposes that further the corporate interest;
- (o) pursue any lawful activity that will aid governmental policy;
- (p) make payments or do any other act, not inconsistent with law, that furthers the business and affairs of the nonprofit corporation;
- (q) establish rules governing the conduct of the business and affairs of the nonprofit corporation in the event of an emergency;
- (r) impose dues, assessments, admission fees, and transfer fees upon its members;
- (s)
  - (i) establish conditions for admission of members;
  - (ii) admit members; and
  - (iii) issue or transfer membership;
- (t) carry on a business;
- (u) indemnify current or former directors, officers, employees, fiduciaries, or agents as provided in this chapter;
- (v) limit the liability of its directors as provided in Subsection 16-6a-823(1);
- (w) cease its corporate activities and dissolve; and
- (x) issue certificates or stock evidencing:
  - (i) membership in the nonprofit corporation; or
  - (ii) interests in water or other property rights.

Amended by Chapter 127, 2001 General Session

**16-6a-303 Emergency powers.**

- (1) In anticipation of or during an emergency defined in Subsection (4), the board of directors may:
  - (a) modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent;
  - (b) adopt bylaws to be effective only in an emergency; and

- (c)
  - (i) relocate the principal office;
  - (ii) designate an alternative principal office or regional office; or
  - (iii) authorize officers to relocate or designate an alternative principal office or regional office.
- (2) During an emergency as defined in Subsection (4), unless emergency bylaws provide otherwise:
  - (a) notice of a meeting of the board of directors:
    - (i) need be given only to those directors whom it is practicable to reach; and
    - (ii) may be given in any practicable manner, including by publication or radio; and
  - (b) the officers of the nonprofit corporation present at a meeting of the board of directors may be considered to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.
- (3) Corporate action taken in good faith during an emergency under this section to further the ordinary business affairs of the nonprofit corporation:
  - (a) binds the nonprofit corporation; and
  - (b) may not be the basis for the imposition of liability on any director, officer, employee, or agent of the nonprofit corporation on the ground that the action was not an authorized corporate action.
- (4) An emergency exists for purposes of this section if a quorum of the directors cannot readily be obtained because of a catastrophic event.

Enacted by Chapter 300, 2000 General Session

**16-6a-304 Ultra vires.**

- (1) Except as provided in Subsection (2), the validity of corporate action may not be challenged on the ground that the nonprofit corporation lacks or lacked power to act.
- (2) A nonprofit corporation's power to act may be challenged:
  - (a) in a proceeding against the nonprofit corporation to enjoin the act brought by:
    - (i) a director; or
    - (ii) one or more voting members in a derivative proceeding;
  - (b) in a proceeding by or in the right of the nonprofit corporation, whether directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the nonprofit corporation; or
  - (c) in a proceeding by the attorney general under Section 16-6a-1414.
- (3) In a proceeding under Subsection (2)(a) to enjoin an unauthorized corporate act, the court may:
  - (a) enjoin or set aside the act, if:
    - (i) it would be equitable to do so; and
    - (ii) all affected persons are parties to the proceeding; and
  - (b) award damages for loss, including anticipated profits, suffered by the nonprofit corporation or another party because of an injunction issued under this section.

Enacted by Chapter 300, 2000 General Session